

Luke Andrew Busby, Ltd.  
 Nevada State Bar No. 10319  
 316 California Ave.  
 Reno, NV 89509  
 775-453-0112  
 luke@lukeandrewbusbyltd.com  
*Attorney for the Plaintiff*

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

<p>COURAGE UHUMWNOMA OSAWE,</p> <p>Plaintiff(s),</p> <p>vs.</p> <p>DMV INVESTIGATOR JENNIFER  TINSLEY, DMV INVESTIGATOR  BRIAN BOWLES, DMV  INVESTIGATOR WILLIAM LYONS  and DMV SERGEANT TODD  PARDINI; and JOHN DOES I through  X, inclusive</p> <p>Defendant(s).</p> <p>_____ /</p>	<p>Case No. 3:18-cv-00600-RCJ-WGC</p> <p><b>MOTION TO COMPEL  FILING OF AN ANSWER OR,  IN THE ALTERNATIVE FOR  A FINDING OF DEFAULT</b></p> <p><b>ORAL ARGUMENT  REQUESTED</b></p>

COMES NOW, COURAGE UHUMWNOMA OSAWE, (“Osawe” or “Plaintiff”), by  
and through the undersigned counsel, and hereby files the following Motion to Compel  
Filing of an Answer or, in the Alternative, for a Finding of Default against DMV  
INVESTIGATOR JENNIFER TINSLEY (“Tinsley”), DMV INVESTIGATOR BRIAN  
BOWLES (“Bowles”), DMV INVESTIGATOR WILLIAM LYONS (“Lyons”), and DMV

SERGEANT TODD PARDINI (“Pardini”) (collectively “the Defendants”); and JOHN DOES I through X, inclusive.

This Motion is made and based upon all of the pleadings and records on file for this proceeding together with every exhibit that is mentioned herein or attached hereto (each of which is incorporated by this reference as though it were set forth hereat in haec verba), if any there be, as well as the points and authorities set forth directly hereinafter.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

The Plaintiff filed a Complaint in this matter on December 24, 2019 (Doc #1). On February 4, 2019, the Defendants filed a Motion for Summary Judgment (Doc #10). On February 8, 2019, the attorneys for the parties had a phone call. During this call, the undersigned counsel for the Plaintiff informed counsel for the Defendants that because only a motion for summary judgment was filed, that the Defendants were in default of their obligation to file a responsive pleading. The Defendants to date have not filed an answer to the Plaintiff's Complaint.

Although a party may move for summary judgment “at any time until 30 days after the close of all discovery,” under FRCP 56(b), the filing of a motion for summary judgment does not toll the time period for responding to an answer under FRCP 12(a)(1)(A)(ii), i.e. within 21 days after being served with the summons and complaint. Under FRCP 12(a)(4)(A), a “motion under this rule” (i.e. an FRCP 12 motion) alters the time period to answer a complaint. FRCP 12(b)1-6 provides the defenses permitted to be asserted in response to a complaint. A motion for summary judgment is not a defense permitted to be made by

1 motion under FRCP 12(b), nor any other provision of FRCP 12.

2  
3 The Defendant's Motion for Summary Judgment (Doc #10) does not cite to FRCP 12,  
4 nor does it argue that the Plaintiff has failed to state a claim upon which relief may be  
5 granted, nor does it assert affirmative defenses or admissions or denials to the to the  
6 Plaintiff's claims in the Complaint as required by FRCP 8(b)(1)(A-B).  
7

8 Under FRCP 12(d), if on a motion under Rule FRCP 12(b)(6) matters outside the  
9 pleadings are presented to and not excluded by the court, the motion must be treated as one  
10 for summary judgment under FRCP 56. However, this provision does not permit a party to  
11 file a motion for summary judgment in lieu of a motion under FRCP 12(b)(6) or an answer,  
12 nor does it permit the Court to construe an FRCP 56 motion as an FRCP 12(b)(6) motion.<sup>1</sup>  
13

14 No provision in the Local Rules, including LR 7-2 governing motions, permits a party  
15 to file a motion for summary judgment in lieu of an FRCP 12(b)(6) motion.  
16

17 FRCP 55(a) permits the Court to enter a default judgment when a party against whom  
18 a judgment for affirmative relief is sought has "failed to plead or otherwise defend." Because  
19 the Defendants have failed to comply with the pleading requirements of both FRCP 12 and  
20 FRCP 8, a finding of default is justified.  
21

22 WHEREFORE, the Plaintiff requests that the Court order the Defendants to file  
23 forthwith an answer to the Plaintiff's Complaint that complies with the requirements of  
24 FRCP 8, or, in the alternative, enter a finding of default as permitted by FRCP 55.  
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27 <sup>1</sup> See *Ricke v. Armco, Inc.*, 158 F.R.D. 149, 1994 WL 597305 (D. Minn. 1994) - a motion to  
28 dismiss presenting matters outside pleadings would not be considered a motion for summary  
judgment before an answer was filed, where summary judgment motion was mislabeled as a  
motion to dismiss to avoid filing an answer.

Respectfully submitted this February 26, 2019.

By: \_\_\_\_\_  
Luke Busby  
Nevada State Bar No. 10319  
316 California Ave.  
Reno, NV 89509  
775-453-0112  
[luke@lukeandrewbusbyltd.com](mailto:luke@lukeandrewbusbyltd.com)  
*Attorney for the Plaintiff*

**CERTIFICATE OF SERVICE**

Pursuant to FRCP 5, I certify that on the date provided below, I caused service to be completed by:

\_\_\_\_\_ personally delivering;

\_\_\_\_\_ delivery via Reno/Carson Messenger Service;

\_\_\_\_\_ sending via Federal Express (or other overnight delivery service);

\_\_\_\_\_ depositing for mailing in the U.S. mail, with sufficient postage affixed thereto; or,

XXXX delivery via electronic means (ECF, fax, eflex, NEF, etc.)

a true and correct copy of the foregoing document addressed to:

AARON D. FORD

Attorney General

NATHAN L. HASTINGS (Bar No. 11593)

Senior Deputy Attorney General

State of Nevada

Office of the Attorney General

555 Wright Way

Carson City, NV 89711

(775) 684-4606 (phone)

(775) 684-4601 (fax)

NHastings@ag.nv.gov

Attorney for Defendants

By: \_\_\_\_\_

Luke Busby

Dated: \_\_\_\_\_